

REMARKS/ARGUMENTS

Applicant responds herein to the Final Office Action dated June 13, 2007.

Applicant's attorneys appreciate the Examiner's continued thorough search and examination of the present patent application.

Claims 1-31 are pending in this application. Claims 6-20 and 23-31 have been withdrawn. Claims 1-5, 21 and 22 have been rejected.

Claims 1-3, 5, 21 and 22 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,767,356 to Kanner et al. ("Kanner"). Reconsideration and withdrawal of this rejection are respectfully requested.

Claim 4 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Kanner in view of U.S. Patent No. 4,456,006 to Wevers et al. ("Wevers").

Contrary to the invention of independent claims 1 and 21 which are directed to cicatrization of bone tissue fragments, Kanner it is not suitable for repair of bone tissue and thus no mention of bone tissue is made in Kanner. In fact Kanner's staple would be very difficult, if not impossible, to use with bone tissue. That is because the two leg members 1102 and 1104 each have two prongs 1102a and 1102b/1104a and 1104b. The prongs become united a short distance from the tips of the leg members. Additionally, the leg members 1102 and 1104 as well as the tabs 1110 include a curve.

Because of these structures, only the prongs will enter the bone, while the rest of the staple, will remain protruding outside of the bone and may easily fall out or be dislodged. To use the full length of the Kanner's staple with the bone tissue, a slit will have to be made in the bone cortex. This, however, may dangerously weakening the bone's resistance to stress. Additionally, the curves of the leg members 1102 and 1104 and of the tabs 1110 will interfere with the use of the full length of the Kanner's staple with the bone tissue.

Moreover, during bone repair operations surfaces of the bone stumps are not in the ideal or final position. To place these bone fragments into a proper position, surgeons apply a first regular compressive staple. While a compression is being applied, an adjustment of the bone position is made, when an ideal reduction (position) is obtained, a second staple is applied fixing bones in that position. The two prongs in each leg member 1102 and 1104 of the Kanner's staple form a quadrangular device which leaves no possibility of modification or improvement of the

position of the bone stumps after the introductory slit (perforated cortex) is made.

As illustrated in FIGs. 68-70, Kanner teaches using a flared mandrel 114' to push legs 1102 and 1104 apart at a point of indents 1108. In FIG. 71 Kanner illustrates flared mandrel 114' pushing distal bridging tips 1116 of the legs 1102 and 1104 apart to elongate the slot 1112 defined by the tabs 1110. In other words any pivoting is achieved by applying force to the legs, not the tabs defining the slot.

Therefore, as discussed, Kanner does not teach, disclose, or suggest “applying a force to the elongated sections of the clip in an area of the non-linear deformable region” as recited in independent claims 1 and 21.

Further, the indents 1108 of the legs 1102 and 1104 of Kanner’s device of FIGs. 67-71 do not anticipate the “at least two straight engagement legs extending parallel to one another” recited in independent claims 1 and 21. This distinction by itself is sufficient to distinguish the invention of the independent claims from the Kanner reference.

In addition, to stress yet another distinction, claims 3 and 22 have been amended to recite that the force applied to the elongated sections of the clip is “selected from at least one to separate and to unite the two elongated sections.” This is not suggested in Kanner. Support for this limitation is provided in paragraph 0022 of the present application, which teaches that separating or bringing the elongated sections 115a, 115b closer together causes the engagement legs 105a, 105b to separate or to come closer together to one another.

Thus, Kanner does not anticipate Applicants’ independent claims 1 and 21 and amended claims 3 and 22.

Wevers was not used by the Examiner to reject the independent claims.

Claims 2-5 and 22 depend directly from the above discussed independent claims and are, therefore, allowable for the same reasons, as well as because of the combination of features in those claims with the features set forth in the respective independent claims.

In view of the above, it is submitted that all claims in this application are now in condition for allowance, prompt notification of which is requested.

THIS CORRESPONDENCE IS BEING
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Respectfully submitted,



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